

TECHNICAL ASSISTANCE – EXEMPTING EDUCATIONAL POSITIONS FROM THE STATE PERSONNEL SYSTEM

Prepared by the Division of Human Resources in the Department of Personnel & Administration in April 2002.

Colorado constitution and statutes allow certain types of positions in the Departments of Education and Higher Education to be outside (exempt from) the state personnel system. The guidelines below were adopted and first issued in April 1977. The legal provisions have not changed and the guidelines remain valid. Because the guidelines are applied when reviewing requests to exempt positions from the state personnel system, they are published below for informational purposes. The process for requesting approval of exempt positions is also included in this document.

REPRINT OF GUIDELINES ORIGINALLY PUBLISHED APRIL 1, 1977

COLORADO STATE DEPARTMENT OF PERSONNEL

GUIDELINES FOR EXEMPTION OF POSITIONS IN EDUCATIONAL INSTITUTIONS AND DEPARTMENTS

Article XII, Section 13 (2) of the Constitution provides, "The personnel system of the state shall comprise all appointive public officers and employees of the state except the following: faculty members of educational institutions and departments not reformatory or charitable in character, and such administrators thereof as may be exempt by law..."

Title 24-50-135, CRS, 1973 further provides, "Exemptions from personnel system.

(1) Administrators employed in educational institutions and departments not charitable or reformatory in character shall include the following, who shall be exempt from the personnel system.

- (a) Officers of an educational institution and their professional staff assistants.
- (b) Heads of administrative units directly responsible to officers of an educational institution.
- (c) Heads of administrative units and their professional staff assistants who relate to the educational function of an educational institution and whose qualifications include training and experience comparable to that required for a faculty member.
- (d) Heads of those functions of an educational institution which are supported primarily by student fees and charges, including heads of residence halls.
- (e) Heads of and professional staff members of departments and inter-collegiate athletics.
- (f) Professional officers and professional staff of the department of higher education, including the professional staff members of any governing board of an institution of higher education.
- (g) Professional officers and professional staff of the department of education.

CRS, 24-50-135 (2): "The state personnel director, in consultation with the officers of such educational institutions or departments, shall determine which administrative positions, under the definitions provided above, are exempt from the state personnel system, subject to an appeal to the (personnel) board."

Since the provisions of the Statute are broad and require further definition, the Department of Personnel, in consultation with officers of those educational institutions and departments affected and with the Department of Law, has developed the following set of guidelines:

1. Constitutional exemption of faculty members.

Guideline: By Constitution, the responsibility for defining faculty in a manner consistent with the approved role and mission is that of the appropriate governing board. Where there is reason to believe that a board has acted in a manner inconsistent with their responsibilities or in a manner which exceeds their authority, the actions may be subject to challenge by appropriate agencies of the State.

2. Statutory exemptions.

(a) Officers of an educational institution and their professional staff assistants.

Guidelines: Officers. Those employees directly empowered by and accountable to the appropriate governing board to formulate and/or implement policies which require the delegation of authority of the governing board in executing the constitutional or statutory role or roles of the institution(s). Since duties in this capacity relate to delegation of board responsibility, this category, in the case of single campus operations, shall include, in addition to the campus Chief Executive Officer, the individual or those individuals responsible for the following functions.

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| Academic Affairs | Public Service Administration |
| Administration | Personnel |
| Budget | Student Affairs |
| Fiscal | Auxiliary Services |
| Research Administration | Health Care Administration |

Further, those boards charged by the Constitution or Statutes with multi-campus jurisdictions or additional research, health care, and/or public service functions may appoint additional officers in accordance with the first sentence of the above guidelines. It shall be the sole prerogative of the individual boards to assign titles to these positions in a manner consistent with the needs of the respective institutions. The head(s) of each designated function shall be appointed as an officer in accordance with proper procedures of the respective governing board.

Professional Staff Assistants. These persons are defined as those individuals directly responsible to an officer for research of policy or procedurally related matters, coordination of functions, and problem resolution of similar responsibilities within the organizational confines of the officer.

(b) Heads of administrative units directly responsible to officers of an educational institution.

Guideline: Heads of administrative units includes those administrators reporting directly to an officer and charged with the management of a program within that officer's area of responsibility.

(c) Heads of administrative units and their professional staff assistants who relate to the educational function of an educational institution and whose qualifications include training and experience comparable to that required for a faculty member.

Guidelines: "Relating to the educational function" is defined as professional level duties in one or more of the following areas:

- (1) Continuing, adult, special or extension education programs;
- (2) Instructional or educational media;
- (3) Professional counseling;
- (4) Student activity sponsors or advisors;
- (5) Research and sponsored programs (for those professional staff who have authority to shape program outcomes);
- (6) Library services;
- (7) Student personnel services; or,
- (8) Professional staff with instructional responsibility in a clinical (medical, legal, etc.) or health care setting.

Qualification for these positions is defined as being consistent with the qualifications required of faculty members by the respective governing boards.

Heads of administrative units related to the educational function coordinate, manage, and direct a function directly related to one or more of the designated educational functions. Supervision of professional staff assistants is not a requirement, provided program responsibility is the essential assignment, and the work is predominantly intellectual and varied in nature and requires the consistent exercise of discretion and judgment.

Professional staff assistants include those positions in such units who perform advanced work in a field of science or learning directly related to one or more of the specified educational functions, including those positions which deal with the non-classroom portion of a student's educational experience, and the work is predominantly intellectual and varied in nature, requiring the consistent exercise of discretion and judgment.

- (d) Heads of those functions of an educational institution which are supported primarily by student fees and charges, including heads of residence halls.

Guidelines: Heads of functions supported primarily by student fees and charges include those positions responsible for the management and/or coordination of major functions related to extra-curricular student services wherever student fees and charges are the basis for the existence of such services.

Heads of residence halls shall include those persons responsible for the overall direction and management of the institutionally controlled student housing services of each institution (if not otherwise exempt), and heads of each separate residence facility whose primary duties are related to student guidance and activity.

A separate facility is identified as a unit or complex centrally administered and directly under the official charged with the direction of all student housing and related activities for a particular campus.

Heads of separate residence facilities whose primary duties are managerial and most closely relate to business and administrative functions shall not be exempt.

- (e) Heads of and professional staff members of departments of inter-collegiate athletics.

Guideline: Professional and administrative positions directly engaged in the development, planning, promotion, instructional processes, and conduct of the inter-collegiate athletic programs shall be exempt.

- (f) Professional officers and professional staff of the department of higher education, including the professional staff members of any governing board of an institution of higher education.

Guidelines: Professional officers and professional staff of the Department of Higher Education includes all professional positions directly involved in the planning, directing, and implementing of legal responsibilities of the Commission on Higher Education, Colorado Council on the Arts and Humanities, and the State Historical Society. Positions engaged in administrative or management support processes shall not be exempt except as provided above. Those positions having educational institutions responsibilities such as faculty, officer, or administrator, may be exempt as provided under those definitions.

Professional staff members directly involved in the planning, directing, and/or implementing of legal responsibilities of any Governing board of an institution of higher education shall be exempt.

- (g) Professional officers and professional staff of the department of education.

Guideline: Professional officers and professional staff of the Department of Education. Professional officers include the Commissioner of Education, Assistant Commissioners of Education, and positions designated by the Board of Education as director, supervisor, consultant, or instructor. Professional staff includes those staff members directly involved in the planning, directing, and/or implementing of legal responsibilities of the State Board of Education and the State Department of Education.

Additional Guidelines

1. The State Personnel Director shall determine which positions shall be exempt from the personnel system, and shall initiate such actions as are necessary to assist in those determinations. The Director's determinations shall be based on the primary duties of positions.
2. When the status of a position is not clearly discernible, the State Personnel Director shall be provided an accurate and complete description of duties along with such other data that is requested. The Director may appoint an advisory committee to serve, as needed, in the resolution of difficult cases or the hearing of appeals. Upon consideration of all facts, and after consultation with the appropriate officers of the educational institution or department concerned, the Director's decision shall become final.
3. The Director's decisions are subject to appeal to the State Personnel Board.

DIVISION OF HUMAN RESOURCES PROCESSES

Requests for new exempt positions

1. The Human Resources (HR) administrator for the educational institution or department will forward requests for approval of exempt positions to DHR for review. Requests must include the Exemption Request Form (developed and maintained by DHR), a complete job description, and an organizational chart. Agencies may develop their own request form as long as it contains the same information included on the state's form. An automated online exemption request form is available at <http://www.state.co.us/dhr/exemptionform.htm>
2. Requests can be mailed, faxed, or emailed to DHR. DHR will attempt to provide a 4-day turn-around on requests; however, incomplete requests usually take additional time. This time frame does not include mail delivery times.
3. All requests will be answered, even those not meeting the criteria for exemption.
4. Agency HR administrators are responsible to notify a classified incumbent of their appeal rights.
5. DHR will maintain a database of all positions approved/denied.

Re-review when changes occur

1. HR administrators will forward a request for review when significant changes occur to the position. Significant changes are defined as any reporting relationship change, duty changes that may affect the approval basis, or a change to title or position number. Minor duty changes that are not likely to affect the approval basis need not be forwarded to DHR.
2. The turn-around times are the same as those for new exemptions -- HR administrators will receive notification of the result of the re-review.

Training and assistance

DHR will provide training and advice to educational institutions and departments upon request. DHR will also maintain the request form and these technical guidelines on its web site for ease of access by all users. DHR will also monitor activities and recommend improvements in efficiency and effectiveness under Consulting Services' HR Auditing Program. DHR staff is available for consultation on exemption issues and problems whenever needed.

Every attempt is made to keep this technical assistance updated. For more detailed information, refer to the Personnel Board Rules and Director's Administrative Procedures or contact your agency human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the laws and rules are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.